

F. ANN RODRIGUEZ, RECORDER
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W
FORTY NINERS COUNTRY CLUB ESTATES, NBR
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When recorded, return to:

David G. Dalby
8987 E. Tanque Verde Road, Suite 309-169
Tucson, Arizona 85749-9399

**FIRST AMENDMENT TO DECLARATION OF ESTABLISHMENT OF
CONDITIONS AND RESTRICTIONS FOR FORTY-NINERS COUNTRY CLUB
ESTATES**

This First Amendment is made effective as of the 1st day of December, 1998, by the seventy-five percent (75%) of the owners of record of the lots within the Subdivision (as defined below).

RECITALS

A. Arizona Land Title & Trust Co., as Trustee under Trust No. 5883-T, Horizon Land Corporation, a corporation, and Leiber & McCarthy Land and Investment Corporation, a corporation, as the former owners of the legal and equitable interest in the certain real property located in Pima County, Arizona, described as:

Lots 1 through 326, inclusive, of Forty-Niners Country Club Estates, a subdivision in Pima County, Arizona, according to the map or plat thereof of record in the office of the County Recorder of Pima County, Arizona, in Book 15 of Maps and Plats at page 39 thereof ("Subdivision")

caused to be established and recorded that certain Declaration of Establishment of Conditions and Restrictions for Forty-Niners Country Club Estates ("Declaration") dated as of March 8, 1961, and recorded as of March 10, 1961, in Book 1746, commencing at page 265 of the official records of Pima County, Arizona.

B. The undersigned owners desire to amend the Declaration by extending its term.

NOW THEREFORE, pursuant to paragraph 23 of the Declaration, the undersigned owners hereby amend to extend the expiration of the term of the Declaration from January 1, 1999, until January 1, 2030. This First Amendment will be effective upon

the date of recordation hereof and, as amended from time to time, will continue in full force and effect until January 1, 2030, and will be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote or written consent to terminate the Declaration, as amended, by seventy-five percent (75%) of the owners of record of the lots within the Subdivision for such purpose. If the necessary votes and/or consents are obtained to so terminate the Declaration, as amended, or to further modify the Declaration, as amended, the Forty-Niners Estates Homeowners Association, an Arizona corporation ("Association"), will cause to be recorded in the official records of Pima County, Arizona, a certificate of termination or further amendment instrument, as the case may be, duly signed by the President or Vice President and attested by the Secretary of the Association, with the signatures acknowledged. Upon such a termination, the Declaration, as amended, will have no further force and effect, and the Association will be dissolved pursuant to the terms set forth in its Articles and otherwise in accordance with the procedures for voluntary dissolution under Arizona law.

IN WITNESS WHEREOF, the undersigned owners have signed this First Amendment to be effective as of the day and year first above written.

REST OF PAGE LEFT BLANK INTENTIONALLY; COUNTERPART SIGNATURE
PAGES ARE ATTACHED HERETO

COUNTERPART SIGNATURE PAGE

This Counterpart Signature Page is made to the First Amendment to Declaration of Establishment of Conditions and Restrictions for Forty-Niners Country Club Estates.

MAGNA INVESTMENT & DEVELOPMENT

Owner(s) Name(s) 4, 5, 10-15, 17, 18, 21, 86-92, 115,
151, 153-157, 261, 262, 268, 315-326

No Site Address Lot(s) Number(s)

Property Address

Spiro E. Papanikolas
Owner's Signature

Co-Owner's Signature, if applicable

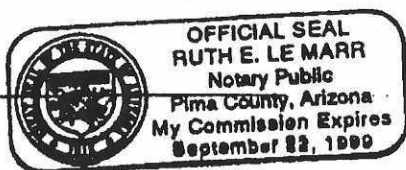
STATE OF ARIZONA

COUNTY OF PIMA

The foregoing instrument by SPIRO E. PAPANIKOLAS
was acknowledged before me this 3RD day of April, 1997.

Ruth E. LeMarr
Notary Public

My Commission Expires:



The
Remaining
Pages
Are
Signature
Pages
Only!

If needed let us know.

BEST COPY

DECLARATION OF ESTABLISHMENT OF
CONDITIONS AND RESTRICTIONS FOR
FORTY-NINERS COUNTRY CLUB ESTATES

KNOW ALL MEN BY THESE PRESENTS:

That Arizona Land Title & Trust Co., as Trustee under Trust No. 5883-T; Horizon Land Corporation, a corporation; and Leiber & McCarthy Land and Investment Corporation, a corporation, being the owners of the following described premises:

LOTS numbered ONE (1) to THREE HUNDRED TWENTY SIX (326), inclusive, FORTY-NINERS COUNTRY CLUB ESTATES a subdivision of Pima County, Arizona, according to the map or plat thereof of record in the office of the County Recorder of Pima County, Arizona, in Book 15 of Maps and Plats at Page 39.

DOES HEREBY DECLARE AND ESTABLISH the following covenants, stipulations and restrictions, all of which are to be construed as restrictive covenants running with the title to the said lots in FORTY-NINERS COUNTRY CLUB ESTATES to provide a uniform plan for the use and enjoyment thereof; and that all conveyances of said lots, with the exception of Lots 1, 2 and 3, hereafter made shall be subject to the said covenants, stipulations and restrictions.

1. Each and every lot shall be used for private residence purposes only, and no structure whatever other than the one first-class, private, one-family residence, together with private garage, guest house and the necessary outbuildings shall be erected, placed or maintained on any lot.

2. No store, office or other place of business of any kind and no hospital, sanatorium or other place for the care or treatment of the sick or disabled, physically or mentally, nor any theatre, saloon or other place of entertainment, nor any church, organization headquarters, meeting place or assembly hall, shall ever be erected or permitted upon any of the lots or any part thereof, and no business of any kind or character whatever shall be conducted in or from any residence on the lots.

3. The principal dwelling shall have a minimum fully enclosed floor area devoted to living purposes, exclusive of porches, terraces, garage and servant quarters, of 1500 square feet on all of said lots.

4. All building plans for any building, swimming pool, wall, fence, coping, or other structure whatever to be erected on or moved upon or to any part of said property, and the proposed location thereof on any lot, and the exterior color scheme thereof, and any changes after approval thereof, and any remodeling, reconstruction, alteration, or additions to any building or other structure on any lot in said property shall be subject to approval in writing of an architect or agent appointed from time to time by the Leiber & McCarthy Land and Investment Corporation, its successors and assigns, as its representative authorized for such purpose. The architect shall establish a reasonable fee to cover his services in studying the plans and specifications submitted to him and for inspecting the premises and such fee shall be paid to him by the owner at the time such plans are submitted to him for approval.

Covenants and restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin are deleted unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

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65973-NLB

5. Before the owner of any lot shall commence the construction or alteration of any building, swimming pool, patio wall, fence, coping or other structure whatsoever on any lot, such owner shall submit to the architect or agent mentioned above, two complete sets of plans, specifications and construction details for said structure showing the nature, kind, shape, height, materials, exterior color scheme, location and approximate cost of such structure and the grading of the lot to be built upon, including location, size and depth of septic tanks or cesspools, and no structure of any kind shall be erected, altered, placed or maintained upon any lot unless and until the plans, specifications and construction details therefor shall have received the written approval of such architect or agent.

6. The architect or agent shall either approve or disapprove said plans, specifications and construction details, within fifteen (15) days from the receipt thereof. One set of said plans, specifications, and construction details with the architect's or agent's approval or disapproval endorsed thereon, shall be delivered to the person submitting said plans, specifications, and construction details by the architect or agent; and the other copy thereof shall be retained by the Leiber & McCarthy Land and Investment Corporation. If said architect shall fail in writing to approve or disapprove of such plans, specifications, and construction details within fifteen (15) days after the delivery thereof to him, and no action has been instituted to enjoin the doing of the proposed work the provisions of this paragraph shall be deemed waived.

7. Said architect or agent shall have the right to disapprove any plans, specifications, and construction details submitted to him as aforesaid if such plans, specifications, and construction details are not in accordance with all of the provisions of this declaration or if, in the opinion of the architect or agent the site, design or color scheme of the proposed building or other structure is not in harmony with the general surroundings of such lot or with the adjacent buildings or structures, or if the plans, specifications, and construction details submitted are incomplete. The decision of such architect or agent shall be final.

8. Neither the Leiber & McCarthy Land and Investment Corporation nor any architect or agent of the Leiber & McCarthy Land and Investment Corporation shall be responsible in any way for any defects in any plans, specifications, and construction details submitted in accordance with the foregoing, nor for any structural defects in any building or structure erected according to such plans, specifications, and/or construction details.

9. The following building location and height restrictions shall apply:

a) No structure, other than a fence or patio wall, shall be located nearer than twenty-five (25) feet to any street property line.

b) No structure, other than a fence or patio wall, shall be located nearer than forty (40) feet to any property line abutting on the golf course property.

c) No structure, other than a fence or patio wall, shall be located nearer than twenty-five (25) feet to the rear property line.

d) No structure, other than a fence or patio wall, shall be located nearer than twenty (20) feet to any side property line. For the purpose of this restriction, eaves, steps and open porches shall be considered as part of the structure.

e) No structure shall be erected, altered, placed or permitted on said lots which exceeds in height sixteen (16) feet from the highest finished grade line immediately adjoining the foundation of the structure.

f) No patio wall, coping, or fence exceeding six (6) feet in height may be erected or maintained on any lot; and no fence, wall or hedge shall be erected or maintained nearer than twenty-five (25) feet to any property line abutting on the golf course property.

PROVIDED HOWEVER, where the topography or location of the property lines of any lot, or the configuration of the structure, or the combination thereof, prevent reasonable construction of the permitted structures, including fences and walls, within the specified area and height, the said architect or agent, may by affirmative action permit a variation from the requirements of these restrictions. In no event, shall the said architect or agent permit a structure other than a fence or patio wall to be located nearer than ten (10) feet to any property line. If any dispute arises as to what constitutes a street, rear or side line, the decision of the architect or agent shall be final.

10. The said architect or agent shall approve the location, height and size of all power poles, radio and TV antennas on said lots.

11. When seventy-five percent (75%) or more of the lots in said property have been sold by the Leiber & McCarthy Land and Investment Corporation, then at any time thereafter the owners of the majority of all lots contained in said property may organize a neighborhood association or committee. Such neighborhood association or committee shall succeed to all of the powers and authority of the Leiber & McCarthy Land and Investment Corporation as to the manner in which the matters covered in paragraphs 4, 5, 6, 7, 8, 9, and 10 hereof shall be enforced.

12. Any lot may be subdivided into smaller parcels, provided no additional lot is created thereby and further provided that the size thereof is not reduced in any particular to below the minimum required by any zoning ordinance or regulation then in force or effect. Any ownership or single holding by any person comprising a part of a lot, parts of two adjoining lots or of the whole lot and part or parts of one or more adjoining lots shall, for all purposes of this declaration of conditions and restrictions, be deemed as constituting a single lot.

13. An entire lot, together with the improvements thereon, may be rented by the owner to a single family, but not otherwise.

14. No horses, cattle, sheep, goats, pigs, rabbits, poultry or other livestock shall be kept or maintained on any part of said property. This restriction shall not be construed, however, as prohibiting the keeping of ordinary domestic pet fowls or animals upon said property; provided, however, that the Leiber & McCarthy Land and Investment Corporation, its successors and assigns shall have the right to order the removal from any lot of any birds, fowls, or animals which may be objectionable to any of the residents of adjacent property. The owner of said birds, fowls, or animals shall immediately remove the same from the premises upon receipt of said notice in writing from the Leiber & McCarthy Land and Investment Corporation, its successors and assigns.

15. No temporary house, trailer, tent, garage or other outbuildings shall be placed or erected on the lots, and no dwelling shall be occupied in any manner at any time prior to completion; provided, however, that during the actual construction or alteration of a building on any lot, necessary temporary buildings for storage of materials, etc., may be erected and maintained by the person doing such work. The work of constructing the dwelling shall be prosecuted diligently from the commencement thereof until completion. In no event shall construction time be over one (1) year.

16. With the exception of one "For Rent" or "For Sale" sign (which shall not be over fifteen by twenty-five (15 x 25) inches) no advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any lot; nor shall the lots be used in any way or for any purpose which may endanger the health or unreasonably disturb the holder of any other lot.

17. No building of any nature shall be removed from without said property to any lot within said property without the consent of the Leiber & McCarthy Land and Investment Corporation, its successors and assigns, and in the event a building shall be so placed from without on any lot, said building shall comply in all respects with each and every provision of this declaration of conditions and restrictions relating thereto.

18. No elevated tanks, of any kind shall be erected, placed or permitted upon any part of said property, excepting water storage tanks for the use of Forty-Miner Water Company or Forty-Miners Country Club Estates or any subsidiary, assignee or successor thereof. Any tanks for use in connection with any residence constructed on said property, including tanks for the storage of gas and fuel oil, gasoline or oil, must be buried or walled in or kept screened by adequate planting or walls to conceal them from the view of the neighboring lots, roads or streets. All evaporative or other air conditioning units or towers shall not be placed on the roof of any structure, and any such units, clotheslines, equipment, service yards, wood piles or storage piles shall be walled in or kept screened by adequate planting, walls or other means in such manner as to conceal them from the view of the neighboring lots, streets or from the view of the golf course property.

19. All rubbish, trash or garbage shall be removed from the lots and shall not be allowed to accumulate thereon, and shall not be burned except by use of incinerator and then only between the hours of six (6) A.M. and ten (10) A.M., during week days.

20. An easement and right-of-way in perpetuity is hereby reserved for the benefit of all lots in said property for the erection, construction, maintenance and operation of pole lines with the necessary cross arms for wires for the transmission of electrical energy and for telephone lines and telegraph lines and for the laying and maintaining of pipes, mains and conduits for the furnishing of water, gas, sewer service or for other purposes, together with the right of entry for the purpose of installing, maintaining and reading electric and water meters, together with the further right to Leiber & McCarthy Land and Investment Corporation, or any subsidiary, assignee or successor thereof, to convey or lease the whole or any portion of such easement, right-of-way, and right of entry to any person or persons or to any corporation or municipal body over, under, along, across, upon and through the easements as shown on the map or plat of said Forty-Miners Country Club Estates, as filed of record in the office of the County Recorder of Pima County, Arizona.

As herein used, "utility easement strip" refers to and means, with respect to a given lot, the portion of such lot, 7½ feet or 10 feet in width, along the outer boundary or boundaries, that is designated "utility easement" on the map.

"Street" includes thoroughfares, drainageways, drainage easements and bridle trail easements shown on the map.

"Service installations" means pole lines (including wires), pipes, mains, conduits and other appliances, whether similar or dissimilar, for which easements are reserved, as stated elsewhere in this Declaration, or which have been installed, or are used, or are intended for supplying (whether in a private capacity or as a public utility), water, gas, telephone, electric power, television, and sewer service at or to the lands or any land embraced within said subdivision.

When any land within the subdivision is conveyed subsequent to recording this Declaration, there shall be deemed to have been reserved and/or excepted from such land, without so stating in the deed or other instrument by which such conveyance is made, the following:

- a) All service installations within the subdivision, wherever situated, and whether owned by the first grantor or others;
- b) An easement and right of way in, on, over and across the land conveyed and in, on, over and across, all "streets" within the subdivision, whether abutting upon the land conveyed, or not, for maintaining, operating, repairing, replacing, relocating, enlarging and constricting existing installations or any installation; and
- c) An easement and right of way in, on, over and across any utility easement strip on the land conveyed, and in, on, over and across all "streets" within the subdivision, whether abutting upon the land conveyed, or not, for installing, maintaining, operating, repairing, replacing, relocating, enlarging and constricting, without limit upon the number of times the right is exercised, pole lines (including wires), pipes, mains, conduits and other appliances, whether similar or dissimilar, for supplying (whether in a private capacity or as a public utility) water, gas, telephone, electric power, television and sewer service at or to the lands or any land embraced within said subdivision.

21. Leiber & McCarthy Land & Investment Corporation, or any subsidiary, assignee or successor thereof, may build hotels, clubhouse facilities, cottages, golf course, recreational facilities and other facilities for lease or sale in tracts shown on Forty-Niners Country Club Estates plat without consent or approval of any owner, mortgagee or other person, firm or corporation, owning or having any interest in any lot or part of premises owned by Leiber & McCarthy Land & Investment Corporation.

22. The native growth on said property, including cacti, mesquite and palo verde trees shall not be destroyed or removed from any of the lots in said subdivision by any of the lot owners, except such native growth as may be necessary for the construction and maintenance of roads, driveways, residences, garages and other out-buildings, and/or walled in service yards and patios, which native growth shall not be removed prior to commencement of construction, and unless written permission be first had and obtained from the Leiber & McCarthy Land & Investment Corporation, its successors and assigns.

23. The aforesaid provision, conditions, restrictions and covenants, and each and all thereof, shall run with the land and continue and remain in full force and effect at all times and against all persons until January 1, 1999, at which time they shall terminate and end and thereafter be of no further legal or equitable effect on said property or any owner thereof unless prior to January 1, 1999, seventy-five percent (75%) of the owners of record of the lots in said subdivision shall by written instrument duly recorded declare a continuation or modification of the same.

24. All provisions, conditions, restrictions, and covenants herein shall be binding on all lots and parcels of real estate and the owners thereof, regardless of the source of title of such owners, and any breach thereof, if continued for a period of thirty (30) days from and after the date that the Leiber & McCarthy Land & Investment Corporation or other property owner shall have notified in writing the owner or lessee in possession of a lot upon which such breach has been committed to refrain from a continuance of such action and to correct such breach shall warrant the Leiber & McCarthy Land & Investment Corporation or other lot owner to apply to any court of law or equity having jurisdiction thereof for an injunction or other proper relief, and if such relief be granted the court may in its discretion award to the plaintiff in such action his reasonable expenses in prosecuting such suit, including attorney's fees.

Provided, that any violation of the foregoing provisions, conditions, restrictions or covenants shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any portion of said property but such provisions, conditions, restrictions, and covenants shall be enforceable against any portion of said property acquired by any person through foreclosure or by deed in lieu of foreclosure for any violation of the provisions, conditions, restrictions and covenants herein contained occurring after the acquisition of said property through foreclosure or deed in lieu of foreclosure.

25. No delay or omission on the part of the Leiber & McCarthy Land & Investment Corporation or its successors or assigns in interest, or the owner or owners of any other lot or lots in said property in exercising any right, power or remedy herein provided for in the event of any breach of any of the provisions, shall be construed as a waiver thereof or acquiescence therein; and no right of action shall accrue nor shall be brought or maintained by anyone whomsoever against the Leiber & McCarthy Land & Investment Corporation, its successors or assigns, nor shall the Leiber & McCarthy Land & Investment Corporation be liable for any damages for or on account of its failure or neglect to exercise any right, power or remedy herein provided for in the event of any such breach, or for imposing herein provisions, conditions, restrictions or covenants which may be unenforceable.

26. In the event that any one or more of the provisions, conditions, restrictions, and covenants herein set forth shall be held by any court of competent jurisdiction to be null and void, all remaining provisions, conditions, restrictions, and covenants herein set forth shall continue unimpaired and in full force and effect.

27. Said property shall be subject to any and all rights which the County of Pima and/or City of Tucson may acquire through dedication or by the filing or recording of maps or plats of said property, including but not limited to drainage easements.

IN WITNESS WHEREOF, the parties to this instrument have caused these presents to be executed by their duly authorized officers this 8th day of March, 1961.

ARIZONA LAND TITLE & TRUST COMPANY
as Trustee under Trust No. 5833-T

By John B. Wilkie
Vice President

HORIZON LAND CORPORATION

By Joseph J. [Signature]
President



W. M. Clark
Assistant Secretary

LEIBER & MCCARTHY LAND & INVESTMENT CORPORATION

By Henry [Signature]
President



Harold M. Carney
Assistant Secretary

STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

This instrument was acknowledged before me this 8th day of MARCH, 1961, by JOHN B. WILKIE as the Vice President of Arizona Land Title & Trust Company, a corporation, as Trustee under Trust No. 5883-T.

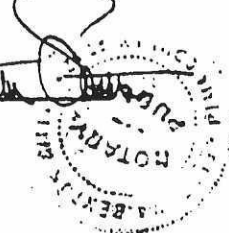
Notary Public

My commission expires:

BOOK 1746 PAGE 372

STATE OF ARIZONA)
) ss
COUNTY OF PIMA)


This instrument was acknowledged before me this 8th day of March, 1961, by Joseph T. ... as the President and ... as the Assistant Secretary of Horizon Land Corporation.

[Signature]
Notary Public


My commission expires:
10/29/61

STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

This instrument was acknowledged before me this 7th day of March, 1961, by ... as the President and ... as the Assistant Secretary of Leiber & McCarthy Land & Investment Corporation.

[Signature]
Notary Public


My commission expires:
10-18-63

APR 11 1961
16558
Fee 5-50
SEARCHED INDEXED
SERIALIZED FILED
State of Arizona }
County of Pima } ss
I hereby certify that the within instrument was filed for record at request
of ARIZONA LAND TITLE & TRUST CO.
A. D. 19
Book 1746 Page 372
Witness my hand and Official Seal
day and year first above written.
ARMA STELLINGSMA, County Recorder
By [Signature]
Deputy

STATE OF ARIZONA)
COUNTY OF PIMA)

I hereby certify that the within instrument was filed for record in Pima County, State of Arizona

No. 16659

Book 1746 Page 323

Witness my hand and Official Seal.

AMNA SULLINGER,
County Recorder

Date: 1961 FEB 10 PM 1:04

Request of: ARIZONA LAND TITLE & TRUST CO

By Eda Mae Smith
Deputy

Fee: 175

Indexed	Paged	Filed
✓		✓

SUPPLEMENTAL DEDICATION

FORTY NINERS COUNTRY CLUB ESTATES

MISCELLANEOUS

WHEREAS, the undersigned, THE FIRST NATIONAL BANK OF CHICAGO, a national banking association, is the holder of the note secured by the mortgage that was recorded August 17, 1959 in the office of the County Recorder of Pima County, Arizona, in Docket 1474 at Pages 295 to 306, inclusive, and is also the holder of record of said mortgage; and

WHEREAS, on December 20, 1960, there was filed in the office of said County Recorder in Book 15 of Maps and Plats at Page 39 thereof, a subdivision map entitled, "Forty Niners Country Club Estates", and said map pertained to subdivision of certain lands in said County of Pima, including the lands then and now subject to said mortgage; and

WHEREAS, the Certificate of Dedication endorsed on said map was not executed by the undersigned prior to the acceptance and recording of said map, and it is now desired to make such subdivision and dedication fully effective;

NOW, THEREFORE, the undersigned, as holder of said mortgage, approves and consents to the subdivision, and the dedication made or intended to be made, as stated in said certificate, intending to bind the interest of the holder of said mortgage in the same manner and to the same extent as though such holder had executed said certificate prior to the acceptance of and filing of said map.

Dated: February 1, 1961.



THE FIRST NATIONAL BANK OF CHICAGO

By M. O. McEvitt
Vice President

Attest D. J. Dick
Assistant Manager

STATE OF ILLINOIS)
COUNTY OF COOK) ss.

The foregoing instrument was acknowledged before me this 3rd day of ~~February~~ ^{March}, 1961, by M. O. McEvitt,
Vice President, and D. J. Dick,

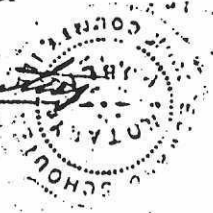
Assistant Manager of THE FIRST NATIONAL BANK OF CHICAGO, a national banking association.

My Commission expires

3/9/1961

Edward Schaubert
Notary Public

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65973-NB

BEST COPY

1 the members of such organization. In such event, the owner of
2 any lot in the above mentioned subdivision or his successors in
3 interest shall be given a reasonable opportunity to become a
4 member of such organization upon the same terms and conditions,
5 including the payment of fees and dues and compliance with the
6 rules and regulations of such organization, applicable to the
7 other regular members of such organization.

8 IN WITNESS WHEREOF this covenant has been executed by
9 the duly authorized officers of the above mentioned corporation
10 this 8th day of December, 1961.

LEIBER & MCCARTHY LAND AND
INVESTMENT CORPORATION

11
12 *Edward C. Smith*
13
14 Secretary

By *Henry E. Leiber*
President

15
16 STATE OF ARIZONA)
17 COUNTY OF PIMA) ss

18 This covenant was acknowledged before me this 8th
19 day of December, 1961, by Henry E. Leiber as President, and
20 Edward C. Smith as Secretary of Leiber & McCarthy Land and
21 Investment Corporation, a corporation.



Louis Rocky
Notary Public

22
23
24 My Commission expires:
25 My Commission Expires Oct. 18, 1963

26
27 *S. M. Hilt*
28 Deputy County Attorney

DUNSEATH, STUBBS, & BURCH
ATTORNEYS AT LAW
SOUTHERN ARIZONA BANK BUILDING
TUCSON, ARIZONA

DECLARATION OF RESTRICTIONS AND COVENANTS
RUNNING WITH THE LAND

KNOW ALL MEN BY THESE PRESENTS:

THAT JAMES G. WEBER and MARGUERITE D. WEBER, husband and wife

_____, owners of those certain lands subject to a
Floodplain Use Permit, being the following described real property, to-wit:

Lot 45 of Forty Niners Country Club Estates, a subdivision of Pima County, Arizona, according to the Map or Plat of record in the Office of the County Recorder of Pima County, Arizona, in Book 15 of Maps and Plats at Page 39 thereof.

Do hereby certify and declare that they have established, and do hereby establish, all of the following conditions, restrictions and covenants upon and subject to which said lands shall be used, improved, occupied, owned, sold and conveyed, to wit: That since the consequence of the uses arising from the granting of the above permit may give rise to drainage, flood or flowage condition which may damage, impair or injure the aforesaid lands or structures, improvements, located thereon now or in the future, therefore, the undersigned owners do place a restriction upon the use and occupancy of said lands requiring themselves, their successors and assigns to save Pima County, its successors and assigns, their employees, officers and agents harmless from any and all claims for damages related to the use of said lands now and in the future by reason of flooding, flowage, erosion or damage caused by water, whether surface, flood or rainfall, and shall, at said owner's sole expense, warrant and defend Pima County, its successors and assigns, their employees, officers and agents against any and all such claims for damages related to the use of said lands now and in the future. That the occupancy of said land is restricted to the condition the user or occupant shall undertake to save Pima County, its successors and assigns their officers and agents, harmless from any and all claims for damages as hereinbefore set forth. The aforesaid provisions, conditions, restrictions and covenants are impressed and imposed upon all of the property described herein, and every portion thereof as a servitude in favor of each and every portion of the property which is not in the ownership of any public body as the dominant tenants.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That no use other than as described within the Floodplain Use Permit Application received by the Pima County Department of Transportation and Flood Control District August 10, 1981, and on file at the office of same, will be exercised without the application for an additional permit.

b. That this use will be located as shown on the plot plan attached to the Floodplain Use Permit Application, which is to be considered a part of said application.

c. That any and all zoning regulations to which the property is subject to at the time of issuance of a Floodplain Use Permit shall be observed.

d. That the area within the 100-year flood prone lines represents an area which is subject to flooding from a 100-year frequency flood and all land in this area shall be restricted to uses that are compatible with Floodplain Management as stated in Pima County Flood Plain Management Ordinance No. 1974-86.

e. That no solid walls, perforated walls, chain-link fencing or other closed-type fencing shall be placed upon the property without the written authorization of the Pima County Flood Plain Board, subsequent to the issuance of the subject permit.

f. That the natural drainage shall not be altered, disturbed, obstructed or restricted, other than as shown on the plot plan attached to the Floodplain Use Permit Application, without approval of the Pima County Floodplain Board.

g. That during times of flooding, access may not be available to the building(s), structure(s) or improvement(s) placed upon this property; and the undersigned, or successors and assigns, shall hold Pima County, its successors and assigns, harmless from any personal injuries, loss of life, or property damages occurring upon the property which result from a lack of such access.

Said provisions, conditions, restrictions and covenants are not personal but shall run with the land and shall be binding on all persons owning or occupying any portion of the above described land henceforward from the date hereof for a period of ninety-nine years, or until such time that the property, through channel improvements, or refinements in the elevations and/or boundaries of the floodway and regulatory floodplain, as approved by the Floodplain Board, is placed outside the limits of said regulatory floodplain.

IN WITNESS WHEREOF, the undersigned has executed these presents this

12 day of August, 1981.

James G. Weber
 JAMES G. WEBER

Marguerite D. Weber
 MARGUERITE D. WEBER

STATE OF ARIZONA) ss
 COUNTY OF PIMA)

This instrument was acknowledged before me this 12 day of August, 1981.

J. Andrew Wayne
 Notary Public

My Commission Expires March 25, 1984



STATE OF ARIZONA) ss
 COUNTY OF PIMA)
 Witness my hand and Official Seal.

I hereby certify that the within instrument was filed for record in Pima County, State of Arizona.

RICHARD J. KENNEDY
 County Recorder

Indexed	Paged	Blotted
	6593	160

By Richard J. Kennedy
 Deputy

No. 85571
 Book 6593 Page 43840
 Date: AUG 13 1981 - 8:20 AM
 Request of: PROPERTY MANAGEMENT

Fee: 2.50

STATE OF ARIZONA

COUNTY OF PIMA

Witness my hand and official seal

Indexed	Filed	Filed

FORM 4-73

I hereby certify that the within instrument was filed for record in Pima County, State of Arizona

IDA MAE SMYTH
County Recorder

By Walter J. ...
Deputy

No. 133585

Book 6150 Page 778-780

Date: NOV 7 1979 9:25 AM

Request of: PROPERTY MANAGEMENT

DECLARATION OF RESTRICTIONS AND COVENANTS
RUNNING WITH THE LAND

KNOW ALL MEN BY THESE PRESENTS:

THAT JAMES G. WEBER and MARGUERETTE D. WEBER, husband and wife,

_____ , owners of those certain lands subject to a
Floodplain Use Permit, being the following described real property, to-wit:

Lot 45 of Forty Niners Country Club Estates, a subdivision of Pima County, Arizona, according to the Map or Plat thereof of record in the office of the County Recorder of Pima County, Arizona, in Book 15 of Maps and Plats at Page 39 thereof.

Do hereby certify and declare that they have established, and do hereby establish, all of the following conditions, restrictions and covenants upon and subject to which said lands shall be used, improved, occupied, owned, sold and conveyed, to wit: That since the corsequence of the uses arising from the granting of the above permit may give rise to drainage, flood or flowage condition which may damage, impair or injure the aforesaid lands or structures, improvements, located thereon now or in the future, therefore, the undersigned owners do place a restriction upon the use and occupancy of said lands requiring themselves, their successors and assigns to save Pima County, its successors and assigns, their employees, officers and agents harmless from any and all claims for damages related to the use of said lands now and in the future by reason of flooding, flowage, erosion or damage caused by water, whether surface, flood or rainfall, and shall, at said owner's sole expense, warrant and defend Pima County, its successors and assigns, their employees, officers and agents against any and all such claims for damages related to the use of said lands now and in the future. That the occupancy of said land is restricted to the condition the user or occupant shall undertake to save Pima County, its successors and assigns their officers and agents, harmless from any and all claims for damages as hereinbefore set forth. The aforesaid provisions, conditions, restrictions and covenants are impressed and imposed upon all of the property described herein, and every portion thereof as a servitude in favor of each and every portion of the property which is not in the ownership of any public body as the dominant tenants.

BOOK 6150 PAGE 778

IT IS FURTHER AGREED AND UNDERSTOOD:

- a. That no use other than as described within the Floodplain Use Permit Application received by the Pima County Highway Department Sept. 24, 1979, and on file at the office of same, will be exercised without the application for an additional permit.
- b. That this use will be located as shown on the plot plan attached to the Floodplain Use Permit Application, which is to be considered a part of said application.
- c. That any and all zoning regulations to which the property is subject to at the time of issuance of a Floodplain Use Permit shall be observed.
- d. That the area within the 100-year flood prone lines represents an area which is subject to flooding from a 100-year frequency flood and all land in this area shall be restricted to uses that are compatible with Floodplain Management as stated in Pima County Ordinance No. 1974-86.
- e. That no chain link or other closed-type fencing, which may impede, retard, or change the direction of flow of water, either in itself or by catching or collecting debris carried by such water, shall be placed on the property.
- f. That the natural drainage shall not be altered, disturbed, obstructed or restricted, other than as shown on the plot plan attached to the Floodplain Use Permit Application, without approval of the Pima County Floodplain Board.
- g. That the finished floor elevation of the lowest floor of any building(s) or structure(s) placed upon the subject property shall be a minimum of 2622.8 MSL above the highest ground elevation at building location(s), as certified by a Registered Professional Civil Engineer or Registered Land Surveyor, prior to the installation of any floors.
- h. That all construction and floodproofing of any building(s) or structure(s) located upon the subject property shall be in conformance with all conditions and/or restrictions of Pima County Flood Plain Management Ordinance No. 1974-86.
- i. That the structure shall be placed with longitudinal axis parallel to the direction of flow.
- j. That the structure shall be firmly anchored to prevent flotation.

Said provisions, conditions, restrictions and covenants are not personal but shall run with the land and shall be binding on all persons owning or occupying any portion of the above described land henceforward from the date hereof for a period of ninety-nine years, or until such time that the property, through channel improvements, or refinements in the elevations and/or boundaries of the floodway and regulatory floodplain, as approved by the Floodplain Board, is placed outside the limits of said regulatory floodplain.

IN WITNESS WHEREOF, the undersigned has executed these presents this

31st day of October, 1979.

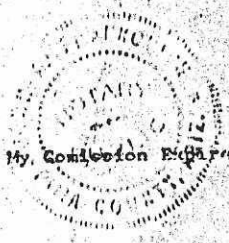
James G. Weber
JAMES G. WEBER

Marguerite D. Weber
MARGUERITE D. WEBER

STATE OF ARIZONA) ss
COUNTY OF PIMA)

This instrument was acknowledged before me this 31st day
of October, 1979.

John A. DeLeon
Notary Public



My Commission Expires NOV. 1, 1979

BOOK 6150 PAGE 780

16. according to the map now on file in the office of the County Recorder of Pima County in Book 3 of Maps and Plats, page 3; to be held for cemetery purposes subject to the By-laws of the party of the first part, and to the rules and regulations now in force, or hereafter to be adopted, by the directors thereof. Provided always that if no interment has been made in said lot, then the party of the second part may resell the same, but only with the written consent of the party of the first part, and upon a resale contrary to this restriction, the said lot will revert to the party of the first part; and that if any interment has been made in said lot, then the same may be sold or disposed of only pursuant to the rules and regulations adopted, or which may be adopted, by the party of the first part, or by its Board of Directors.

IN WITNESS WHEREOF the party of the first part has caused these presents to be executed by its President, and its corporate seal to be affixed thereto, and to be attested by its Secretary in accordance with a resolution for that purpose first adopted by its Board of Directors, the day and year first above written.

THE TUCSON CEMETERY ASSOCIATION

J. Knox Corbett President.

Attest: John M. McBride Secretary.



TERRITORY OF ARIZONA,
County of Pima

Before me, Willis P. Hayner, a Notary Public in and for the said County of Pima, Territory of Arizona, on this day personally appeared J. Knox Corbett, President and John M. McBride Secretary of the corporation by which the foregoing instrument purports to be executed, known to me to be the persons whose names are subscribed to the foregoing instrument as President and Secretary respectively of said corporation, and each of them acknowledged to me that as such officer, he executed said instrument for said corporation for the purpose and consideration therein expressed, as his free act and deed, and by each of them voluntarily executed.

Given under my hand and seal of office this 6th day of November A. D. 1909.

My commission will expire January 2, 1911.

Willis P. Hayner Notary Public.

Filed and recorded at request of Monte Mansfield, Jan. 20 A. D. 1913 at 2:15 P.M.

P. H. Howell County Recorder

By Deputy

R. THE UNITED STATES OF AMERICA, TO ALL TO WHOM THESE PRESENTS SHALL COME, PERTAINING PHOENIX 91076.

WHEREAS, There has been transmitted in the GENERAL LAND OFFICE of the United States a Certificate of the Register of the Land Office at Phoenix, Arizona, whereby it appears that, pursuant to the Act of Congress approved 20th May, 1902, "To secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of Antonio Salazar has been established and duly consummated, in conformity to law, for the south half of the northeast quarter of Section five in Township fourteen south of Range sixteen east of the Gila and Salt River Meridian Arizona, containing eighty acres, according to the Official Plat of the Survey of the said Land, returned to the GENERAL LAND OFFICE by the Surveyor General:

NOW KNOW YE, That there is, therefore, granted by the United States unto the said Antonio Salazar the tract of Land above described; TO HAVE AND TO HOLD the said tract of Land, with the appurtenances thereof, unto the said Antonio Salazar and to his heirs and assigns

BEST COPY

forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with water rights, as they are recognized and acknowledged by the local customs, laws and decisions of courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law. And there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

IN TESTIMONY WHEREOF, I, William H. Taft, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the Eleventh day of April, in the year of our Lord one thousand nine hundred and ten, and of the Independence of the United States the one hundred and thirty-fourth.

By the President: Wm. H. Taft

By M. F. LeRoy Secretary.

H. W. Sanford

Recorder of the General Land Office.

EAL

RECORDED: Patent Number 124823.

Filed and recorded at request of Hesse Drachmann, Jan. 28 A. D. 1913 at 11:25 A.M.

P. H. Howell County Recorder

By *M. G. Miller* Deputy

THE UNITED STATES OF AMERICA, TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING: WHEREAS there has been deposited in the General Land Office of the United States a certificate numbered fifty-eight of the Register and Receiver at Tucson, Arizona, whereby it appears that, under the provisions of the Act of Congress approved on the fifth day of February, one thousand eight hundred and seventy-five, entitled "An Act to grant title to certain lands in the Territory of Arizona," the claim of Angelita Paige has been duly established to the lot numbered six of Section ten in township fourteen South of range thirteen east of the Gila and Salt River Meridian in the Territory of Arizona, containing an area of fifty-three acres and sixty hundredths of an acre.

NOW KNOW YE, That the United States of America, in consideration of the promises herein set forth, and in conformity with the provisions of the Act of Congress aforesaid, HAS GIVEN AND GRANTED and by these presents DOES GIVE AND GRANT unto the said Angelita Paige the tract of land above described.

TO HAVE AND TO HOLD the said tract of land with the appurtenances thereof, unto the said Angelita Paige her heirs and assigns forever.

IN TESTIMONY WHEREOF, I, William McKinley, President of the United States of America, have caused these Letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington this fifteenth day of May in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States the one hundred and twenty-first.

By the President, William McKinley

By H. McKen Secretary.

C. H. Brush

Recorder of the General Land Office.

SEAL

STATE OF ARIZONA
COUNTY OF PIMA

I hereby certify that the within No. 80096
instrument was filed for record
in Pima County, State of Arizona Book 1866

80096
1866 545 v 546
1961 DEC 11 AM 9:59

Witness my hand and Official Seal.

ANNA SULLIVAN, Clerk

County Recorder

Date

Request of:

DUNSEATH, STUBBS & BURCH

Indexed	Filed	Recorded
<i>OK</i>		

RESTRICTIVE COVENANT

250

MISCELLANEOUS

1
2 IT IS COVENANTED by LEIBER & McCARTHY LAND AND
3 INVESTMENT CORPORATION, an Arizona corporation, as follows, to-
4 wit:

5 THAT IT HAS laid out and is developing a tract of
6 land now known as the Forty Niners Country Club Estates, Pima
7 County, Arizona, for attractive residential purposes, and desires
8 to secure to each lot owner therein the full benefit and
9 enjoyment of his home, and to prevent the impairment of the
10 desired tone of such subdivision.

11 THAT FOR THE PURPOSE of continuing this subdivision
12 as a most desirable residential area, it is hereby agreed that
13 Blocks 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16 and 17
14 of Forty Niners Country Club Estates, Pima County, Arizona, as
15 shown by the map or plat of such subdivision of record in the
16 office of the County Recorder, Pima County, Arizona, in Book 15
17 of Maps and Plats at page 39 thereof, shall forever after be
18 kept as an open area of natural vegetation or landscaped with
19 grass, shrubs, trees or ponds. The intent is to preserve this
20 area for recreation uses, and buildings, structures, and other
21 facilities appropriate to its use for golf, tennis, swimming
22 or other recreations, and all activities incident thereto, may
23 be erected and maintained on the premises.

24 THIS AGREEMENT constitutes a restrictive covenant
25 running with the land and the owner of each lot in the above
26 mentioned subdiv' sion or his successors in interest shall have
27 the right to invcke and enforce its provisions by a restraining
28 order or injunction,

29 IT IS HEREBY further understood that a duly authorized
30 organization may improve, develop and operate the use of the above
31 mentioned blocks and may restrict the use of such premises to
32

DUNSEATH, STUBBS & BURCH
ATTORNEYS AT LAW
SOUTHERN ARIZONA BANK BUILDING
TUCSON, ARIZONA

*Covenants and restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin are deleted unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

2226 283-285

LIGHT & POWER CO.

Thomas J. Marshall

**BEST
COPY**

EASEMENT AND USE AGREEMENT

This Easement and Use Agreement, made the 12th day of August, 1964, between STEWART TITLE AND TRUST OF TUCSON, as Trustee under Trust Agreement No. 0157; and GUS PAPANIKOLAS, herein called Grantor, and The Tucson Gas, Electric Light and Power Company, a corporation, herein called Grantee.

WITNESSETH:

WHEREAS, Grantor is the owner and developer of a portion of Forty Niners Country Club Estates, a subdivision of Pima County, Arizona, a map or plat of which subdivision is of record in the office of the County Recorder of Pima County, Arizona, in Book 15 of Maps and Plats at Page 39 thereof, and

WHEREAS, Grantor desires Grantee to furnish underground electric service to said subdivision and the lots therein and Grantor has constructed or will construct electrical underground conduits, pullboxes and transformer foundations, all in accordance with specifications approved by Grantee, and located or to be located as shown on the plat or sketch that is attached hereto and made a part hereof;

NOW, THEREFORE, Grantor does hereby grant to Grantee the exclusive right to use and occupy said conduits, pullboxes and transformer foundations, with right of access thereto, for all purposes for which the same are designed to be used, and Grantor does hereby grant to Grantee an easement for the laying, construction, use, operation, inspection, maintenance, repair, replacement and removal of underground electrical cables, conductors, wires and appurtenances, through and by means of the conduits, pullboxes and transformer foundations, with right of access thereto, constructed or to be constructed by Grantor, and such additional circuits as said Grantee may in the future require, for any and all purposes for which the same may be used, through, on, in, and beneath said real property; said easement for underground electric cables, pullboxes and pad-type transformers shall be six feet in width, being located three feet on

NE-7

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each side of the center line of the easement as shown on the plat or sketch attached hereto.

Upon approval of the construction and occupancy by the Grantee of the conduits, pullboxes and transformer foundations, the Grantee shall be responsible for the maintenance, operation, inspection and replacement of the same, and also of all cables, wires, transformers and appurtenances installed by Grantee.

Grantee shall have the right to cut back or remove any natural growth or other objects which interfere with or endanger said underground conduits, cables or transformers or the safe and proper maintenance and operation thereof, and Grantee shall have the right of ingress and egress to and from said underground system and all parts thereof, for all uses and purposes in the exercise of the easements and rights herein granted.

All electrical equipment installed by Grantee upon the herein described easement shall remain the personal property of the Grantee and shall not be deemed part of the realty.

The provisions of this Easement and Use Agreement shall be and become a covenant running with the land and they shall be binding upon and inure to the benefit of the successors in interest and assigns of the parties hereto.

IN WITNESS WHEREOF, Grantor has subscribed this instrument in execution hereof, the day and year first above written.

STEWART TITLE AND TRUST OF TUCSON, as Trustee under Trust Agreement No. 0157

By

STATE OF ARIZONA)
) ss.
County of Pima)

On this 11 day of July, 1964, before me, the undersigned officer, personally appeared _____ who acknowledged to me that he is the _____ of _____ a corporation, and that he executed the foregoing instrument for and on behalf of said corporation.

Notary Public

My Commission expires: _____ 1964

FORTY-NINERS COUNTRY CLUB ESTATES

Gas Papanikolis



SCALE 1"=200'



Proposed U.G. Ducts
 ■ Proposed Transformer Locations

T.C.E.L.&P. Co.
 February 3, 1964
 Auth. No. none
 School Dist. No. 1
 Drawing No. 5760-E



**FORTY NINERS
 COUNTRY CLUB ESTATES**

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65156

1965 SEP 13 AM 11 'A

Thomas J. Marshall

375

EASEMENT AND USE AGREEMENT

This Easement and Use Agreement, made the 26th day of August, 1965, between STEWART TITLE AND TRUST OF TUCSON, as Trustee under Trust Agreement No. 0156, herein called Grantor, and TUCSON GAS & ELECTRIC COMPANY, a corporation, herein called Grantee,

WITNESSETH:

WHEREAS, Grantor is the owner and developer of Forty Niners Country Club Estates, a subdivision of Pima County, Arizona, a map or plat of which subdivision is of record in the office of the County Recorder of Pima County, Arizona, in Book 15 of Maps and Plats at Page 39 thereof, and

WHEREAS, Grantor desires Grantee to furnish underground electric service to said subdivision and the lots therein and Grantor has constructed or will construct electrical underground conduits, pullboxes and transformer foundations, all in accordance with specifications approved by Grantee, and located or to be located as shown on the plat or map that is attached hereto and made a part hereof;

NOW, THEREFORE, Grantor does hereby grant to Grantee the exclusive right to install, occupy and use said conduits, pullboxes and transformer foundations, with right of access thereto, for all purposes for which the same are designed to be used, and Grantor does hereby grant to Grantee an easement for the laying, construction, use, operation, inspection, maintenance, repair, replacement and removal of underground electric cables, conductors, wires and appurtenances, through and by means of the conduits, pullboxes and transformer foundations, with right of access thereto, constructed or to be constructed by Grantor, and such additional circuits as said Grantee may in the future require, for any and all purposes for which the same may be used, through, on, in, and beneath said real property; said easement for underground electric cables, pullboxes and pad-type transformers shall be six feet in width, being located three feet on each side of the center line of the

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ement as shown on the plat or sketch attached hereto.

Upon approval of the construction and occupancy by the Grantee of the conduits, pullboxes and transformer foundations, the Grantee shall be responsible for the maintenance, operation, inspection and replacement of the same, and also of all cables, wires, transformers and appurtenances installed by Grantee.

Grantee shall have the right to cut back or remove any natural growth or other objects which interfere with or endanger said underground conduits, cables or transformers or the safe and proper maintenance and operation thereof; and Grantee shall have the right of ingress and egress to and from said underground system and all parts thereof, for all uses and purposes in the exercise of the easements and rights herein granted.

All electrical equipment installed by Grantee upon the herein described easement shall remain the personal property of the Grantee and shall not be deemed part of the realty.

The provisions of this Easement and Use Agreement shall be and become a covenant running with the land and they shall be binding upon and inure to the benefit of the successors in interest and assigns of the parties hereto.

IN WITNESS WHEREOF, Grantor has subscribed this instrument in execution hereof, the day and year first above written.

STEWART TITLE AND TRUST OF TUCSON, an
Trustee Under Trust Agreement No. 0150

Lynn E. Bisik
Lynn E. Bisik, Trust Officer

STATE OF ARIZONA)
) ss.
County of Pima)

This instrument was acknowledged before me, the undersigned notary public, by Lynn E. Bisik, Trust Officer of Stewart Title & Trust of Tucson an Arizona Corporation as Trustee on the 26th day of August, 1995.

Elizabeth J. ...
Notary Public


My Commission expires: 1-10-00

T. G. & P. CO.
Date: 8-19-69
Auth. No. 60248
School Dist. 11
Dwg. No. 7551-F

X Riser Pole
--- Underground Primary
--- Underground Secondary
⊗ Transformer Pad
○ Secondary Pedestal

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APPROVED FOR THE DISTRICT BY

NO. 2070 - PAGE 124

FORTY NINERS
COUNTRY CLUB ESTATES